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Applicant: Zurcher, Robert G.
Application Serial No.: 09/922,620
Filing Date: August 16, 2001
Docket No.: 102-477 CIP (P-3522/1P1)
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proximal end of said shield to a shoulder, wherein said first ramp includes a plurality of touch bumps.

REMARKS/ARGUMENTS

The status of the claims in the application to date is as follows: claims 30-58 are in the application. Claims 30-38 and 46-52 have been rejected. Claims 39-45 and 53-58 are objected to. Claims 30, 36, 39, 47, 50 and 53 are amended herein. No new matter has been added.

Applicant's Response to the 37 C.F.R. 1.75(d) Objection to the Specification

The Examiner has objected to the specification as evoking means-plus-function language to define the invention. The Examiner has required the specification be amended pursuant to 37 C.F.R. 1.75(d) and M.P.E.P. section 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, and acts perform the function recited in the claim element. Applicant respectfully submits that the specification at paragraph 27 as amended does set forth representative structure, materials and acts which perform the function recited in the claim elements. Applicant respectfully submits that the Specification as amended conforms to 37 C.F.R. 1.75(d) and M.P.E.P. section 608.01(o) and respectfully requests withdrawal of the objection.

Applicant's Response to the Objection to Claims

The Examiner has objected to claims 33-34 and 47-48 for the reasons set forth above with respect to the specification. Applicant respectfully submits that the claims in their present form are fully supported by the specification as discussed above. Withdrawal of the objection is respectfully requested.

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Applicant's Response to Rejection of Claims Under 35 U.S.C. §102

The Examiner has rejected claims 30-36, 38, 46-50 and 52 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,147,319 to Ishikawa *et al.* ("Ishikawa"). Specifically, the Examiner posits that the Ishikawa reference teaches an elongate needle with a beveled distal end, a length of tubing, an elongate housing, a pair of wings, and a shield pivotally secured to the housing by arms/mounting means. The Examiner indicates that Ishikawa teaches flexible wings, with rigid arms, with the elements having a relative degree of flexibility and rigidity.

Applicant respectfully traverses the rejection. In order for a reference to anticipate, it must disclose every aspect of the claimed invention. The invention as presently claimed requires a shield having a hinge with a hinge axis about which the shield pivots, where the hinge axis is normal to a plane that bisects the wings. Therefore, in order for Ishikawa to anticipate the present invention, it must disclose a hinged shield having this configuration. Accordingly, Ishikawa cannot serve as an effective §102 reference since it lacks the presence of a hinge in the claimed configuration and in fact could not perform its function were it to have such configuration. Applicant submits that the rejection of claims 30-36, 38, 46, 47-50 and 52 under 35 U.S.C. §102 has been overcome in light of the above, and reconsideration is respectfully requested.

Applicant's Response to Rejection of Claims Under 35 U.S.C. §103

The Examiner has rejected claims 37 and 51 under 35 U.S.C. §103 as being unpatentable over Ishikawa in view of U.S. Patent No. 4,743,265 to Whitehouse (Whitehouse). Specifically, the Examiner reiterates findings regarding Ishikawa and observes that Ishikawa fails to disclose a single hinge. The Examiner asserts that Whitehouse teaches single and double hinges used to form a connection are interchangeable and concludes that it would have been obvious to one having ordinary skill in the art to modify the single hinge of Ishikawa to a double hinge.

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Applicants respectfully traverse the rejection on the grounds that the Examiner has filed to establish a *prima facie* case of obviousness because the combination of references as suggested fails to teach or suggest all the limitations of the claims. As discussed *supra*, Ishikawa fails to disclose, teach, or even suggest the configuration of the hinged shield as presently claimed. In fact, such configuration would render the needle assembly of Ishikawa unusable for its intended purpose because the wings, which are integral with the shield, would be rotated 90 degrees from their present location. This configuration would prevent a user from being able to adequately perform the blood drawing function. Additionally, the Whitehouse reference fails to provide this missing element. Therefore, the combination of Ishikawa and Whitehouse fails to disclose, teach or even suggest each of the elements of the invention as presently claimed. Applicant submits the rejection of claims 37 and 51 under 35 U.S.C. §103 has been overcome and reconsideration is respectfully requested.

Allowable Subject Matter

Applicant gratefully acknowledges the Examiner's recognition of allowable subject matter in claims 39-45 and 53-58. Applicant respectfully submit that these claims are allowable in their present form in light of the amendments to the base claims from which they depend.

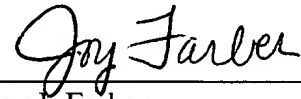
Applicants submit the present claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 08-2461.

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If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's attorney at the telephone number set forth below.

Respectfully submitted,



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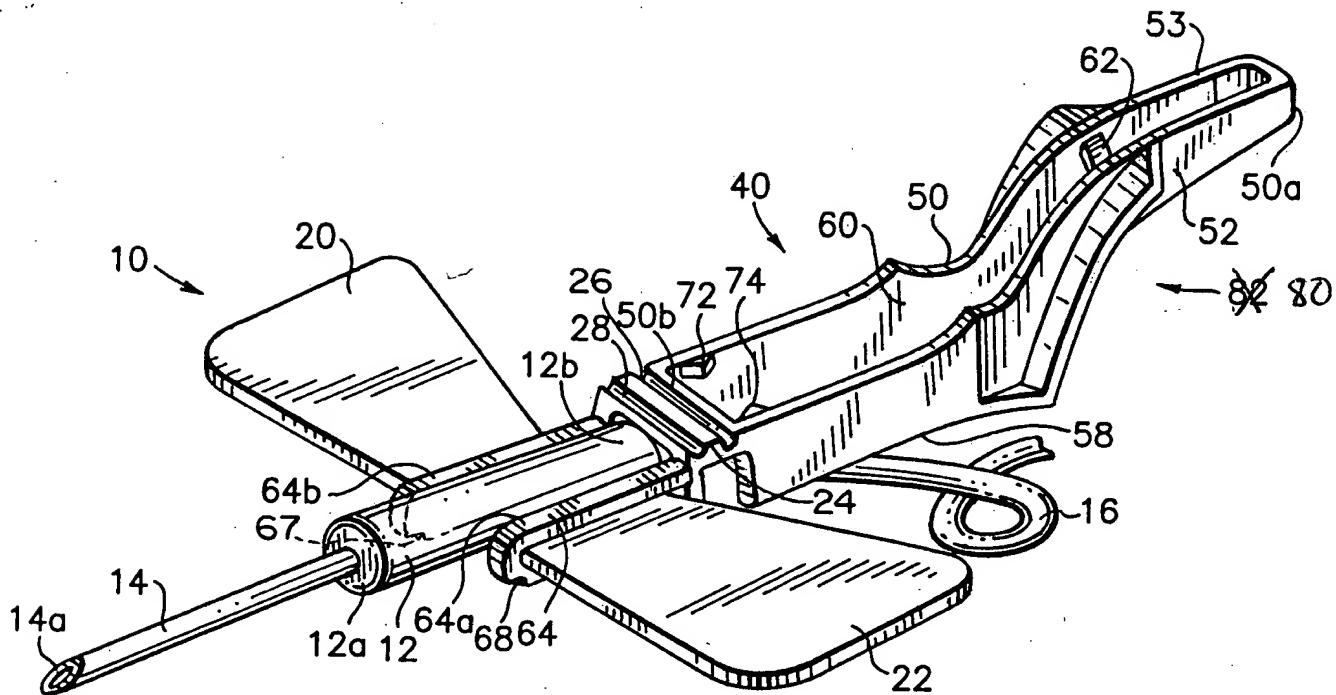


FIG. 1

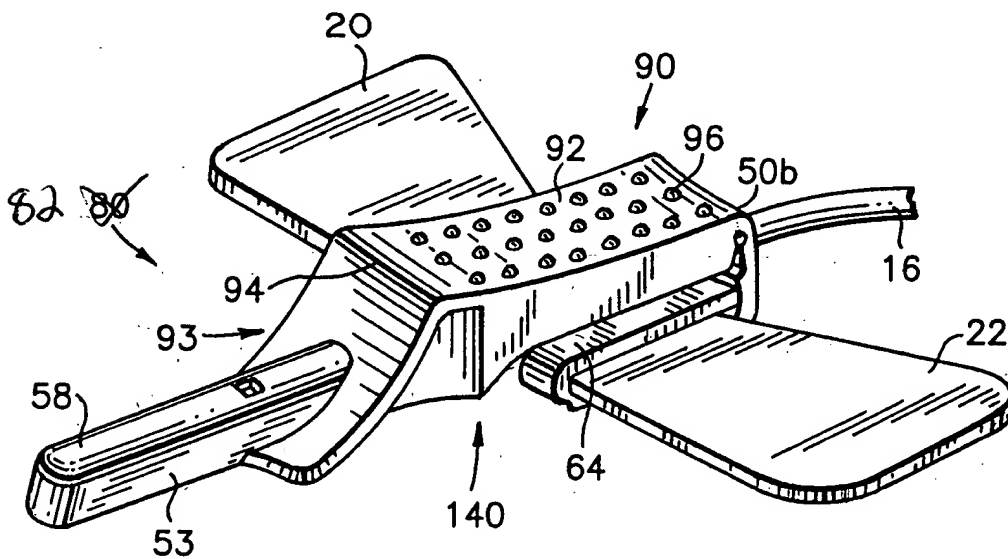


FIG. 2

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